

REMARKS

Claims 1, 3, 4, 18, 20, 22, 24 and 25 were pending in this application. Claims 1, 20, and 24 have been amended and new claims 26-28 have been added. Upon entry the pending claims are 1, 3, 4, 18, 20, 22, 24 and 25-28.

Support for the amendment of claim 1 may be found, among other places, in original claims 3 and 4. Claims 20 and 24 have been amended to correct minor stylistic and typographical errors. Support for new claims 26-28 may be found, among other places, in original claims 14; 11; and 3 and 12, respectively. Applicants maintain that the amendments are supported by the disclosure and do not raise an issue of new matter. Entry of this Amendment is respectfully requested.

The first page of the Office Action states, "Claim(s) 1, 3, 4, 18, 20, 22, 24 and 25 is/are rejected." Yet the Office Action contains no rejection of either claim 3 or 4. In a December 3, 2009 telephone conference Examiner Eric Olson confirmed to the undersigned that there is no pending rejection of claim 3 or 4, and that the quoted statement to the contrary is wrong.

Claim 1 has been amended to incorporate the limitations of claims 3 and 4, which have been found to be allowable. As a result of this amendment, it is believed that the sole rejection, on grounds of alleged lack of enablement, has been overcome, and that this application is in condition for allowance. The new claims recite individual compounds that are already recited in the claim 1 Markush groupings.

Claims 1, 18, 20, 22, 24, and 25 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled. This rejection is respectfully traversed.

The rejection acknowledged that the specification is “enabling for methods of treating certain specific toxicities such as damage to hemat[o]poietic or mucosal tissue . . . as discussed in the specification.” (page 4). Claim 1 recites a method of treating toxicity *selected from the group consisting of damage to hematopoietic tissue and damage to mucosal tissues*. Applicants respectfully submit that the rejection has been overcome.

Reconsideration and withdrawal of all rejections and objections, and prompt notice of allowance, are respectfully requested.

The Office Action sets forth an analysis of the effective date to which the claims are entitled. That analysis concludes that “the effective filing date of the claims . . . is seen to be the filing date of parent application 07/903107, June 25, 1992.” (Office Action, page 3). In the course of that analysis the Office has purported to determine that the claims are not entitled to the benefit of the prior applications filed in 1991, 1990, or 1987 (Office Action, pp. 2-3). Applicants do not now take a position as to whether that determination is correct since, as applicants believe to be the case, it is not necessary to do so to address any pending rejection. But applicants do not necessarily concede its correctness, and reserve the right to reconsider the issue if and when it should become necessary to resolve an issue of patentability.

No fee, other than the extension of time fee, is believed necessary in connection with the filing of this Amendment. If any additional fee is required, the Commissioner is authorized to charge the amount of such fee to Deposit Account No. 50-1677.

Respectfully submitted,

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